

5/10/01

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF
THE TTAB

Paper No. 8
TR

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Hotline Sales Corp.

Serial No. 75/525,736

Howard Joseph of Law Office of Howard Joseph for Hotline Sales Corp.

Elliott S.A. Robinson III, Trademark Examining Attorney,
Law Office 108 (David Shallant, Managing Attorney).

Before Simms, Cissel and Seeherman, Administrative Trademark Judges.

Opinion by Simms, Administrative Trademark Judge:

Hotline Sales Corp. (applicant), an Illinois corporation, has appealed from the final refusal of the Trademark Examining Attorney to register the mark DEVON for clothing, namely, men's, women's and children's socks and hosiery.¹ The Examining Attorney has refused registration

¹ Application 75/525,736, filed July 27, 1998, claiming use and use in commerce since 1992. The Examining Attorney also refused registration on the basis that applicant's mark is primarily merely a surname, pursuant to Section 2(e)(4) of the Act. Applicant overcame that refusal by submitting a declaration under Section 2(f) of the Act.

Ser. No. 75/525,736

under Section 2(d) of the Act, 15 U.S.C. §1052(d), on the basis of Registration No. 765,959, issued March 3, 1964 (renewed), for the mark shown below for skirts, suits and sweaters for women.

Applicant and the Examining Attorney have submitted briefs, but no oral hearing was requested.

At the outset, we should point out that the registered mark was amended in 1985 to show the mark DEVON in the following form:

See attachment to this decision. Accordingly, as far as the marks are concerned, we must consider the amended mark to be the mark on the basis of which the refusal has been made.

Upon careful consideration of the arguments of applicant's attorney and the Examining Attorney, we conclude that confusion is likely when the respective marks are used in connection with socks and hosiery (for men,

women and children) on the one hand and for skirts, suits and sweaters for women on the other.

In its brief, applicant has compared the registered mark to the slightly stylized display of its mark on the specimens of record. In particular, applicant points to the exaggerated "V" in its mark as actually used and contrasts that to the registered mark. However, it is the mark displayed on the drawing sheet - DEVON in typed form - that is to be compared with registrant's mark because that is the mark sought to be registered. Because the actual registered mark is slightly different from the form of the registered mark argued by the attorneys, much of the argument concerning the similarities and differences of registrant's and applicant's marks is not relevant. Suffice it to say that because of the similarities in sound, appearance and commercial impression of the two marks, they are likely to cause confusion when the respective marks are used in connection with closely related goods.

With respect to the goods, neither the registration nor the application contains any limitation concerning channels of trade or classes of purchasers. Accordingly, we must assume that registrant's clothing items and applicant's socks and hosiery travel in all normal channels

of trade for these goods to all potential classes of purchasers. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). Such goods would, of course, be sold in clothing and department stores, as the Examining Attorney argues. These goods may also be sold in discount stores, as applicant has contended. Further, although registrant's goods are specifically for women, we note that applicant's goods also include socks and hosiery for women.

We conclude that purchasers, aware of registrant's DEVON skirts, suits and sweaters for women, who then encounter applicant's DEVON socks and hosiery (also including socks and hosiery for women) are likely to believe that these goods all come from the same source. See, for example, In re Mercedes Slacks, Ltd., 213 USPQ 397 (TTAB 1982)(OMEGA for hosiery vs. OMEGA and design for trousers); In re Cook United, Inc., 185 USPQ 444 (TTAB 1975)(GRANADA for men's suits, coats and trousers vs. GRANADA for ladies' pantyhose and hosiery); and In re Kosugi Sangyo Kabushiki Kaisha, 128 USPQ 16 (TTAB 1960)(GRACE for sweaters, gloves and headwear vs. LADY GRACE for hosiery and knitted underwear).

Decision: The refusal of registration is affirmed.